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FEDERAL TRADE COMMISSION

16 CFR Part 0

Delegation of Limited Authority

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission is publishing a rule that delegates certain limited functions where the Commission is unable to act because it lacks a quorum. The functions delegated are those in which no party or intervenor has a right to petition the agency for discretionary review or in which a party or intervenor has waived such a right. In matters in which at least one Commissioner determines to participate, the delegation is made to the participating Commissioner or to the body of Commissioners who are participating. In matters in which no Commissioner is participating, the General Counsel has authority to carry out the delegated functions. This delegation is not intended to alter or affect existing delegations to Commission staff.

DATES: These amendments are effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: David C. Shonka, Acting General Counsel, (202) 326-2222, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Commission Rule 0.7, 16 CFR 0.7, provides that the Commission, pursuant to Reorganization Plan No. 4 of 1961 (“Plan No. 4”) (75 Stat. 837, 26 FR 6191), may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, or others within the Commission. As noted in section 1(a) of Plan No. 4, this authority supplements the Commission’s inherent authority to delegate its functions.

The Commission has determined that there may be instances in which it would be unable to resolve or act in certain matters in the absence of a quorum for the transaction of business. *See* Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum). Under these circumstances, the Commission believes that a delegation of its authority to act to resolve or advance matters in which no party or intervenor has a right to petition the agency for discretionary review or in which any such party or intervenor has waived such a right, serves the public interest. This delegation is not intended to alter or affect existing delegations to Commission staff.

The delegate or delegates are authorized to act 1) in instances in which no party or intervenor would be adversely affected by the action and entitled to seek discretionary review by the full Commission, and 2) in matters where a party or intervenor would be adversely affected and entitled to seek such review, but the affected party or intervenor has waived such right, as provided by section 1(b) of Plan No. 4. In either instance, the delegation would not adversely affect the procedural rights of the relevant party or intervenor.

In matters in which at least one Commissioner is participating, the delegation is made to the participating Commissioner or to the body of Commissioners who are participating. In matters in which no Commissioner is available or no Commissioner is participating, the General

Counsel in consultation, where appropriate, with the Directors of the Bureaus of Consumer Protection, Competition, and Economics has authority to carry out these limited delegated actions without power of redelegation.

The instant delegation is only authorized for those matters in which the Commission lacks a quorum as set forth in Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum). The delegation is not in effect in instances in which the Commission has a quorum.

This delegation does not extend to the authority to act as an Administrative Law Judge in a formal administrative adjudication or impact any statutory requirements specifically requiring action by a quorum of Commissioners.

Regulatory Flexibility Act

The Commission certifies that these new regulations, which deal solely with internal policies governing FTC personnel, do not require an initial or final regulatory analysis under the Regulatory Flexibility Act because they will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

The regulations adopted herein do not contain information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

Administrative Procedure Act

The amended rule is published in final form without the opportunity for public notice and comment because it is a rule of “agency organization, procedure, or practice.” *See* 5 U.S.C. 553(b)(3)(A).

List of Subjects in 16 CFR Part 0

Administrative practice and procedure, Organization, Delegation of functions.

For the reasons stated in the preamble, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations, as follows:

PART 0 -- ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1); 15 U.S.C. 46(g).

2. Revise § 0.7 to read as follows:

§ 0.7 Delegation of functions.

(a) The Commission, under the authority provided by Reorganization Plan No. 4 of 1961, may delegate, by published order or rule, certain of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, and retains a discretionary right to review such delegated action upon its own initiative or upon petition of a party to or an intervenor in such action.

(b) The Commission delegates its functions, subject to certain limitations, when no quorum is available for the transaction of business. The delegate or delegates are authorized to act in instances in which no party or intervenor would be adversely affected by the delegated action and entitled to seek review by the Commission, as provided by section 1(b) of Reorganization Plan No. 4 of 1961, or in instances in which all such adversely affected parties or intervenors have waived such a right. In actions in which at least one Commissioner is participating, this delegation is to the participating Commissioner or to the body of Commissioners who are participating. In actions in which no Commissioner is available or no Commissioner is participating, the General Counsel in consultation, where appropriate, with the Directors of the Bureaus of Consumer Protection, Competition, and Economics shall exercise this delegated authority without power of redelegation. This delegation does not alter or affect other

delegations to Commission staff. This delegation is only authorized for those instances in which the Commission lacks a quorum as set forth in Commission Rule 4.14(b), 16 CFR 4.14(b) (Commission quorum).

By direction of the Commission.

Donald S. Clark,
Secretary.

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